

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
301-344-0632

MEMORANDUM

TO: Assistant United States Attorney Deborah Johnston, Esquire
Assistant United States Attorney Sandra Wilkinson, Esquire

FROM: Judge Peter J. Messitte

RE: Lighty v. United States, Civ. No. 12-3065 PJM, Crim. No. 03-0457
Flood v. United States, Civ. No. 11-3563, Crim. No. 03-0457
Counsel for Batson/J.E.B. Challenge

DATE: January 10, 2013

* * *

The Court is in receipt of Mr. Lighty's Amended Motion to Vacate, Set Aside, or Correct Sentence and for a New Trial Pursuant to 28 U.S.C. § 2255 (Paper No. 451), and Petitioners' Joint Motion for Discovery Regarding the Allegations of Impermissible Discrimination in Jury Selection Made in Their Motions for Relief Under 28 U.S.C. § 2255 (Paper No. 453).

The filings suggest that Petitioners intend to argue that AUSAs Johnston and Wilkinson have a history of engaging in impermissible sex-based discrimination in selecting juries in capital cases.

Under the circumstances, the Court believes that it would be appropriate for another Assistant United States Attorney (or attorneys) to serve as primary counsel in arguing the response to the discrimination allegations. The Court emphasizes that this decision in no way reflects its opinion on the merits of the allegations or the work thus far done by AUSAs Johnston and Wilkinson.

AUSAs Johnston and Wilkinson are, of course, invited and expected to share their input, author pleadings, attend hearings, and participate in litigating these claims. Moreover, the Court's order applies only to litigation of the Batson/J.E.B. claims; once that stage of the litigation is complete, the litigation may proceed with whatever staffing the Government chooses.

For the reasons stated, the Court **ORDERS** the United States Attorney's Office to appoint special counsel for the limited purpose of litigating all aspects of the impermissible discrimination allegations and the accompanying discovery motion(s).

/s/

PETER J. MESSITTE
UNITED STATES DISTRICT JUDGE

Cc: Court File
Julie Brain, Esquire
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